

ASSEMBLY BILL

No. 1072

Introduced by Assembly Member Wagner

February 22, 2013

An act to amend Section 2944.7 of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1072, as introduced, Wagner. Mortgage loan modification.

Existing law, applicable to residential mortgages, prohibits a person who negotiates, arranges, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation from, among other things, demanding or receiving any compensation until every service that the person contracted to perform or represented that he or she would perform is accomplished. Existing law makes a violation of these provisions by a natural person a misdemeanor punishable by a specified fine or imprisonment, or both.

This bill would authorize a violation of these provisions to be punished as a felony with imprisonment in county jail, as specified. By changing the definition of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 2944.7 of the Civil Code is amended to read:

2944.7. (a) Notwithstanding any other provision of law, it shall be unlawful for any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:

(1) Claim, demand, charge, collect, or receive any compensation until after the person has fully performed each and every service the person contracted to perform or represented that he or she would perform.

(2) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation.

(3) Take any power of attorney from the borrower for any purpose.

(b) A violation of this section by a natural person is a ~~public offense~~ punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail for a term not to exceed one year *or imprisonment in county jail pursuant to subdivision (h) of Section 1170 of the Penal Code*, or by both that fine and imprisonment, or if by a business entity, the violation is punishable by a fine not exceeding fifty thousand dollars (\$50,000). These penalties are cumulative to any other remedies or penalties provided by law.

(c) Nothing in this section precludes a person, or an agent acting on that person's behalf, who offers loan modification or other loan forbearance services for a loan owned or serviced by that person, from doing any of the following:

(1) Collecting principal, interest, or other charges under the terms of a loan, before the loan is modified, including charges to establish a new payment schedule for a nondelinquent loan, after the borrower reduces the unpaid principal balance of that loan for the express purpose of lowering the monthly payment due under the terms of the loan.

(2) Collecting principal, interest, or other charges under the terms of a loan, after the loan is modified.

1 (3) Accepting payment from a federal agency in connection
2 with the federal Making Home Affordable Plan or other federal
3 plan intended to help borrowers refinance or modify their loans
4 or otherwise avoid foreclosures.

5 (d) This section shall apply only to mortgages and deeds of trust
6 secured by residential real property containing four or fewer
7 dwelling units.

8 SEC. 2. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.